



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Pacific Instruments, Inc.  
File: B-228274  
Date: October 21, 1987

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### DIGEST

Protest that contracting agency allowed insufficient time for submission of best and final offers after issuance of a significant amendment to the solicitation is dismissed as untimely where protest was not filed before the due date for receipt of best and final offers.

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### DECISION

Pacific Instruments, Inc. (Pacific), protests any award under request for proposals (RFP) No. N00140-87-R-1938, issued by the Department of the Navy for the acquisition of signal conditioning amplifier systems. We dismiss the protest.

On September 24, 1987, Pacific protested to our Office that the Navy failed to allow sufficient time for offerors to consider a significant amendment to the solicitation prior to the submission of a second best and final offer (BAFO). Pacific alleges that on Wednesday, September 16, it was telephonically advised of the Navy's decision to delete in its entirety clause 2 of the solicitation, entitled "Interchangeability of Parts is Required," only 2 working days before the time set for receipt of second BAFOs, which was Monday, September 21 at 4:00 p.m. Pacific contends that this short time period did not give the firm an opportunity to "resolve new technical issues" created by the amendment prior to the September 21 closing date.

The Navy states that when offerors were telephonically notified on September 16 of the amendment, all, including Pacific, advised the contracting officer that the closing date of September 21 was acceptable and all timely submitted BAFOs. The agency argues, and we agree, that the protest is untimely since it was filed 3 days after the closing date for receipt of BAFOs in contravention of our Bid Protest Regulations, which require that protests such as this be

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filed prior to the due date for receipt of BAFOs. See 4 C.F.R. § 21.2(a)(1) (1987); Hampton Roads Holdings, Inc.-- Request for Reconsideration, B-222429.2, May 5, 1986, 86-1 CPD ¶ 434 at 2.

Although the protester has taken issue with the Navy's report in several respects, none of the points it has raised change this conclusion. Pacific now states that the basis for its protest is not the time allotted for response to the amendment but the nature of the amendment itself; that no one "authorized to negotiate with the government" agreed on behalf of the company to the acceptability of the due date; that it did not submit a BAFO; and, finally, that "there is no such thing as an untimely protest. Protests may be filed with the GAO both before and after an award is made. Our protest was clearly filed prior to any award."

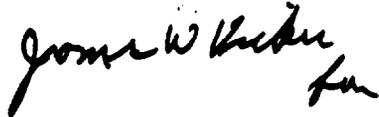
The record shows that on the same day the Navy orally advised offerors that BAFOs were requested following deletion of the "Interchangeability of Parts is Required" clause, it sent a confirming letter to the same effect which, at least in Pacific's case, referred to a conversation with a specific company employee. Upon receipt of this request for BAFO's, Pacific responded by letter dated September 18 to the contracting officer, in which it referred to the amendment to the solicitation and the short period of time allocated for the submission of a BAFO. Moreover, Pacific stated in its letter that the contracting agency's action allegedly placed the firm at "a competitive disadvantage without sufficient time to resolve new technical issues . . . prior to the deadline for a best and final offer." Nonetheless, while advising the agency that it was awaiting an opinion from its attorney "as to whether a formal protest is justified," Pacific elected to "affirm [its] previous offer." Thereafter, by letter dated September 23 (2 days after the closing date), Pacific filed the instant protest with our Office in which it stated that it had been advised by legal counsel "to protest [the solicitation] before it is awarded."

Pacific attached to its initial protest to our Office a copy of its September 18 letter as a means of "defining" its "position." When all of Pacific's submission is read as a whole, we think it not unreasonable of the Navy to understand Pacific's complaint to be that it had been given inadequate time in which to assess and respond to a solicitation amendment which changed the competitive environment. Nevertheless, even if as it now states, Pacific's objection is to the "nature" of the amendment rather than to its timing, it was obligated to protest prior to the due date of BAFOs. Similarly, whether Pacific considers its employee to

whom the Navy buyer telephonically communicated the amendment as not authorized to "negotiate" on behalf of the company or whether it considers the "affirmation" of a "previous offer," made in response to a call for BAFOs, to be something other than a BAFO, this does not relieve the firm of the responsibility of timely filing a protest.

Finally, and perhaps most importantly, it appears that the protester is of the opinion that its protest is timely so long as it is filed prior to award of the contract. This is incorrect. As we indicated above, our Bid Protest Regulations specifically state that "alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation." 4 C.F.R. § 21.2(a)(1). We will not consider the merits of Pacific's protest since it was filed subsequent to the closing date for receipt of BAFOs, and is therefore untimely. See Washington Patrol Service, Inc., B-228180, Sept. 30, 1987, 87-2 CPD ¶ \_\_\_\_.

Accordingly, the protest is dismissed.



Robert M. Strong  
Deputy Associate  
General Counsel